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"Muddying the waters: recreational conflict and rights of use of British rivers"

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Abstract Rivers have historically been spaces of recreation, in addition to work, trade, and sustenance. Today, multiple groups (anglers, canoeists, rowers, swimmers) vie for the recreational use of rivers in Britain. But, this paper argues, legal definitions of rights of use have not kept up with the growth of recreational river use. Focusing on two groups, anglers and canoeists, it explores the emergence of conflict between recreational users of British rivers in the twentieth century, and subsequent campaigns for universal public rights of navigation on inland waterways. As a result of conflict (real and perceived), small-scale organized groups have re-conceptualized river spaces in ways that reflect a modern engagement with, and understanding of, water through recreation. This papers foregrounds recreation as a form of water-use that generates important water-knowledge. Grounded in the Environmental Humanities, it draws on notions of legal geographies, 'modern' waters, and hydrocommons to suggest that small-scale conflicts on British rivers are challenging how we use, govern, and conceptualize river water.

Keywords Rivers · Recreation · Angling · Canoeing · Conflict · Legal geographies · Hydrocommons

As I write, water streams down the windows of my office. There is a steady patter of rain falling on the street outside, washing away the autumn leaves. There are times in a British winter where everything seems infused with water, and that the very stones of the city could express moisture like a sponge at a touch. In this mild and wet climate, there is a seeming over-abundance of H_2O.

Though at certain times of year water may seem almost omnipresent, here, as elsewhere, discourses of water scarcity are evident (Seckler et al. 1999; Shiva 2002; Bakker 2004;

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Loftus 2009).[1] The British tabloids are famously sensationalist, and never more so than during a hot summer ('Drought!') or a wet winter ('Floods!'), but their discussion of water use reflects concern at a higher level.[2] In 1999, the government designated official Areas of Water Scarcity. In 2007 and 2013, the terminology switched to discussions of places of "water stress"—where household use is a high proportion of, or higher than, rainfall—while sustained heavy rainfall in the winter of 2013 led to serious flood damage across Britain and reignited debates over water management (Department for Environment, Food and Rural Affairs (DEFRA 2013) and Environment Agency (EA), 2013; see also Bakker 2005). The diverse pressures on water systems in a rainy country have meant that water is a historically contested resource.

Academic attention to international contestations of water has focused on environmental security, and in the British context, how the privatization of the water supply industry has affected the provision of water and perceptions of water as a resource (Gleick 1993; Falkenmark 2001; Barnett 2001; Dalby 2002). This paper takes both the notion of contestation, and of privatization, to a different setting: the river. It looks at how recreational users have fought, and continue to fight, over the right to use rivers. Two groups in particular have come to blows—discursively, and at times physically—over their right to the river: anglers, who fish from the bank, and canoeists (or "paddlers") who move down the river on their craft.[3] This conflict remains unknown to many beyond the core interest groups. It encourages passionate debates online yet remains largely out of the spotlight of the mainstream media. It has fuelled direct action and organized campaigns for universal recreational rights on rivers, yet remains unresolved in policy or law.

This little-known conflict offers an illuminating starting point for considering the complexities of modern water use. Within the broad theme of competing water uses, a range of ideas useful for unpicking the intricacies of this conflict are deployed. I begin by retracing, briefly, the origins of the two pursuits in Britain. The long history of angling, contrasted by the much more recent arrival of canoeing, informs the conflict on multiple levels, from hard-to-quantify but often-invoked notions of insider/outsider, to more practical concerns regarding river management and assertions of property rights.

The paper also considers the conceptual lineage of the canoeists' campaign for (and the anglers' defence against) access to rivers. A case study of a mass canoe trespass on the River Seiont (North Wales) is argued to be an incarnation of a long-running resistance to

[1] I have followed the house style for footnotes. For references to oral history interviews, and for other longer and more complicated archival references (for example, legal citations) I have followed the advice of *Water History* editors and included them as full footnotes for clarity.

[2] Press coverage of weather extremes and water scarcity is not a new phenomenon. In the 1950s, for example, the threat of a "national water shortage" following several dry seasons (summer 1953–spring 1955) received significant media coverage. "The National Shortage," *Manchester Guardian. 12 November* 1956. More recently, winter 2013–14 saw heavy sustained rainfall and severe flooding in low-lying Somerset and elsewhere. Traditionally an area prone to winter flooding (the name Somerset derives from 'land of the summer people'), this latest weather event was framed by climate change, modern farming practices, and government culpability. "UK Weather: Fire Service Heads to Flood Ravaged South in Largest Deployment Since WW2," *The Independent. February 13,* 2014; "Somerset at Front Line of Climate Change in UK," *The Guardian. September 26,* 2013; "Hundreds of UK Flood Defence Schemes Left Unbuilt Due to Budget Cuts," *The Guardian. July 14,* 2012

[3] Canoeists in some places prefer to be known as "paddlers." The canoeists/paddlers I have interviewed over the course of my research in the UK use both terms, at times interchangeably. I have not ascertained a strong feeling against the term "canoeist," and use it in this paper for purposes of clarity, and not least because "paddling" could be confused for another popular pastime of wading and splashing in water.

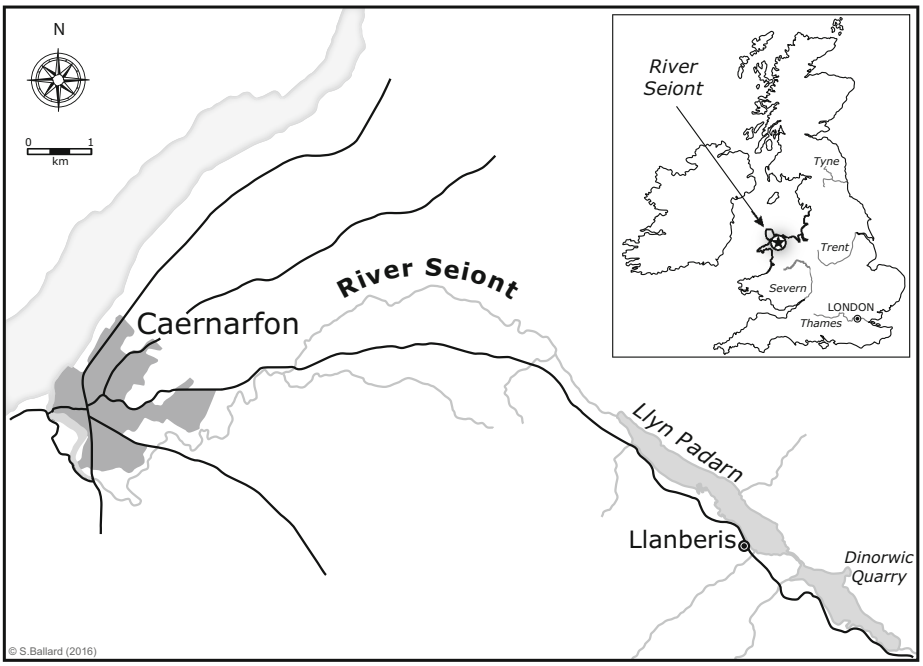

Fig. 1 Map of the river Seiont, North Wales, and major rivers of England and Wales © Sebastian Ballard

notions of private property and enclosure in Britain (Fig. 1). But more recent campaigning, based on knowledge of water law, looks further back to ancient ideas of a natural commons. Using the conceptual framework of legal geography, I suggest that the failure of law to address multidimensional uses of rivers has created the conditions for conflict to emerge, and that the recreational groups have developed highly nuanced legal and moral geographies of water that are deployed to defend existing rights, or stake a claim to gain rightful use. Furthermore, in their promotion of a universal right of water use for pleasure, canoeists speak to international debates on water justice and the notion of a "hydrocommons" that has emerged in the social sciences (Tarlock and Wouters 2010; Neimanis 2009).[4] Arising in different disciplines, these ideas are brought together to form a multifaceted exploration of recreational conflict that reflects the interdisciplinary nature of the environmental humanities and addresses the entangled reality of modern water use.

On the waterways of a post-industrial nation and between two select communities of recreational river users, a conflict has emerged which has wider importance for proponents of progressive water policies. Neither particularly green nor especially well-organized, the campaign for river access for all nonetheless connects with some important discussions of place, belonging, and the often-overlooked role of recreation in creating and sustaining meaningful relationships with particular natural environments and between social groups, state organizations, and legal institutions.

[4] The idea of a hydrocommons has emerged from work on, and concerns with, water privatization and its implications for human rights, poverty, and global water security. It argues that legal recognition of water as a fundamentally universal, shared resource is crucial to avoid future water-driven violence and achieve effective and equitable water governance.

Angling

Fishing for sustenance has been practiced from the very earliest peoples, using spears, nets, and lines. Commercial fisheries were well established in Britain by the Middle Ages, and a range of technologies were used to maximize yield, including fish trap fence-like structures built into rivers (*kydells*). By the time the Magna Carta collated and confirmed English law in 1215, kydells and weirs (built to alter the flow of a river, primarily for water mills) were prolific, problematic obstructions to navigation. The Magna Carta (1215) decreed that "all *kydells* from henceforth shall be utterly put down by Thames and Medway, and through all England."[5] Whether the purpose of the legislation was to keep rivers free for the passage of boats or for the migrations of fish is unclear, but it functioned to the advantage of both (Hale 1787; Howarth 1987).[6] Rivers were "the cherished veines" of trade and commerce until the Industrial Revolution's canals, railways and roads created new transportation networks (and brought a new raft of legislation regarding water quality and navigation) (Willan 1964, p.3).

The publication of *A Treatise on Fysshynge with an Angle* (1496) offers documentary evidence for the emergence of recreational fishing.[7] The "angle", or rod, introduced an aspect of rest to fishing, which by the time Izaak Walton wrote *The Compleat Angler* in 1653, was identified as "the contemplative man's recreation." Rather than wading with a net, or hand-working a line, anglers could pursue their prey from the riverbank, acquiring through doing so a particular appreciation of the river environment. Walton's work demonstrates an appreciation of river ecologies. His protagonist Piscator talks of "fence months", "namely March, April and May" as necessary times of abstinence for the angler "for these be the usual months that *salmon* come out of the Sea to spawn in most fresh Rivers, and their Fry would about a certain time return back to the salt water, if they were not hinderd by *weres* [weirs] and *unlawful gins* [traps], which the greedy Fisher-men set, and so destroy them by the thousands" (Walton 1653, p.213). River obstructions by commercial fishermen, as highlighted in the Magna Carta, were still an issue in the seventeenth century and were much opposed by recreational anglers. The idea of the angler as steward of the river environment is also evident. A tradition of 'close season' was established, whereby anglers withhold from taking fish from a river during breeding and hatching season, and is still in place today. Current close season runs in England and Wales from 15 March to 15 June.[8]

Post-Walton angling enjoyed a huge surge in popularity, informed by a rich literature (*The Compleat Angler* has never been out of print). Nineteenth century newspapers hired angling columnists; *Bell's Life in London*'s Edward Fitzgibbon was attributed to have converted "not tens…but thousands" of anglers through his column. As angling became more commonplace, demand to fish highly-prized salmon and trout rivers (such as the Tyne, the Scottish Tweed, and the Southern English chalk streams) encouraged landowners

[5] (1215) John 18, cc 19.6. xx s 23.

[6] In *A Treatise Relative to the Maritime Law of England* Lord Chief Justice Hale argued that the legislation was about protection of navigation. In that period (late eighteenth century) navigation was the more pressing legal issue. William Howarth, in *Freshwater Fishery Law,* offers a later, contrasting, interpretation that instead emphasized fisheries protection.

[7] *A Treatise on Fysshynge with an Angle* (the first instructive text on fishing) is attributed to Dame Juliana Berners, a nun of whom little is known beyond her texts on fishing, hunting and hawking.

[8] NB. 'Close season' in England and Wales does not apply to enclosed stillwaters such as reservoirs, lakes and ponds, and a majority of canals, which can be fished all year round. 'Close season' in Scotland applies only to salmon and trout fishing, and varies from river to river.

to charge for access to the riverbanks. As fishing was rising in popularity, Victorian industrialization was also in full swing. Effluent from mills, factories and coalfields flowed untreated into rivers across the country. Concern over the state of fish stocks led to the Salmon and Fisheries Act (1865), after which regional boards monitored water quality, introduced fish passes, and restocked rivers. In 1869 the Angling Association was formed to safeguard angler's interests, and the government introduced rod licences in the 1870s to raise revenue to fund the management of fish stocks (MacClancy 1996). Anglers organized into syndicates to spread the cost of paying riverbank fees.

A divide emerged between game fishing for salmon and trout, often using a 'fly' as bait, and coarse fishing, for all other freshwater fish (Coopey 2010, p.62). Game fishing in the nineteenth century became expensive and exclusive—a sport of kings and queens, no less, as George IV, Victoria, and Albert all fished—often pursued on private hunting estates. Coarse fishing by contrast developed a working class identity, with pubs and working-men's clubs running competitions in waterways closer to industrial centers. By the early twentieth century, "nearly every pub in northern England had its own angling club; in London there were over 600 pub-based clubs" (MacClancy 1996, pp.115–6). Today, distinctions between the two are more blurred according to the sports' representative body, and practitioners. A majority of game fishermen now release their catch to preserve fish stocks, the cost of equipment and charges has levelled, and one unlucky species—the grayling—is pursued by both categories. What has endured is the organized nature of anglers, who belong to clubs and syndicates to pursue their sport, and the willingness (or acceptance of the need) to pay for access to fishing waters. In the period October 2013—October 2014, 140,000 people aged 14 and over participated in angling at least once a week, making it Britain's 16th most popular sport (Sport England 2014).[9]

Canoeing

Compared to angling, canoeing is a more recent, imported activity. In 1830 a Mr. Canham was reported to have journeyed from Cherbourg to Alderney in a vessel "much like an Icelander's caiak" (Ferrero 2002, pp.8–9). But the decisive figure in establishing canoeing in Britain was John Macgregor, who in 1865 commissioned a London boatbuilder to construct a 'Rob Roy' canoe inspired by craft he had observed in North America and on Russia's Kamchatka Peninsula (Cock 1974; Weir 2010). He founded the Canoe Club in 1866 and in 1867, the first paddling regatta was held with fifteen canoes taking part (Cock 1974, p.5).

Canoeing became more popular on the continent than in Britain, and in 1924 Austria, Germany, Denmark and Sweden established the Internationalen Representation für Kanusport (IRK). It is worth noting that in Sweden land rights for the populace were historically quite different to the UK and continental Europe. Swedes have enjoyed *allemansrätt*, the right of public access, for centuries largely due to the absence of a feudal system (except in the far south). It gives the right to make fire, travel by boat, temporarily camp, hunt, pick berries, and bathe where one chooses (on public or private land), without disturbing the landowners (Facos 2002, p.105). In Germany and Austria, canoeing became linked with skiing (as complementary winter-summer activities) and took off with the

[9] The Active People Survey (APS) has collected data on sport participation since 2005, but has included angling as a sport only since 2012-13, making historical data comparisons between angling and canoeing difficult. An interactive web analysis tool is available here: http://activepeople.sportengland.org.

Alpinist trend in the 1920s. British visitors to Germany noted canoeing's popularity, partly facilitated by the invention of a lightweight, portable 'folding' canoe, and began importing them to the UK. One of the first British manufacturers of canoes was F.O.D. Hirschfeld, a German refugee who established Tyne Canoes Ltd. in 1935 (Cock 1974, p.7). As the sport grew, a national body—the British Canoe Union (BCU)—was formed in 1936 in time to send a team to the Berlin Olympics.

The term "canoeing" encompasses a range of activities, from open canoeing to kayaking, to competitive disciplines such as sprint racing and slalom. This paper is predominantly concerned with recreational canoeing, whereby participants use canoes to move down rivers at leisure. Though a (relatively) young sport, canoeing is a popular way to enjoy water. Of the 743,000 boat-owning households in the UK, 276,260 own a canoe (Arkenford Ltd 2012, p.20). According to Sport England statistics, 59,400 people aged 14 and over took part in canoeing or kayaking at least once a week in 2013–2014.

Despite the high participant numbers of both sports, there is no inherent reason for anglers and canoeists to come into conflict over their use of rivers. The former are based on the riverbank, with lines stretching out into the water, or in the water, standing, with waders, up to the waist; the latter float on the surface, taken by the flow of the water downstream, and able to steer their craft using paddles. Often, the two groups seek out different river conditions—the faster flow of a river in spate [in flood] attracts thrill-seeking paddlers, for example, but is avoided by anglers, who prefer clearer and calmer waters. In 1950, *Angling* magazine ran a feature titled "Adventure On Your Doorstep," which exclaimed that the "opportunities that our own waterways offer are immeasurable. There are literally thousands of miles of interconnected rivers and canals at our back-doors… [with] first rate fishing" (Bradshaw 1950, pp.239–40). It actively encouraged anglers to canoe, espousing the "acquisition of a collapsible canoe" as "one you'll never regret." There is no suggestion that canoeing may interrupt anglers on the bank, no warning that paddling on many rivers is considered trespass in English law—no inference, that is to say, of any conflict between the two groups.

Navigation, recreation, and the law

The article romanticized the idea of canoe travel, conveying an assumption that, in the "true backwoods style" of journeying by canoe, the waterways of England and Wales are as accessible as those of Canada or Scandinavia. The opposite was true. Canada rejected English rules of navigation by 1886, when it abandoned the distinction between tidal and non-tidal waters and the Supreme Court ruled that if waters are navigable in fact (i.e., if it is possible to navigate them), a public right of navigation exists.[10] Case law established that this covers anything that can carry a vessel, including canoes and log floats, thus contributing to the creation of an independent Canadian legal identity, and socio-cultural

[10] Justice La Forest in *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992]1 S.C.R. 3 (Can.) notes that "except in the Atlantic provinces, where different considerations may well apply, in Canada the distinction between tidal and non-tidal waters was abandoned long ago; see *In Re Provincial Fisheries* [1896], 26 S.C.R. 444; for a summary of the cases, see my book on *Water Law in Canada* [1973], at pp. 178–80. Instead, the rule is that if waters are navigable in fact, whether or not the waters are tidal or non-tidal, the public right of navigation exists. That is the case in Alberta where the Appellate Division of the Supreme Court, applying the *North-West Territories Act* [1886] R.S.C., c. 50, rightly held in *Flewelling v. Johnston* [1921], 59 D.L.R. 419, that "the English rule was not suitable to the conditions of the province.""

'creation myths' of territorial possession and national identity that (arguably) appropriated indigenous traditions as a way of distancing from Anglo-American heritage (Dean 2013; Erikson 2013). English law maintains a differentiation between tidal and non-tidal waters, with consequences for recreational users. Tidal waters (estuaries, brackish creeks) hold a right of public navigation, and in non-tidal waters (inland rivers, 'sweet' or fresh watercourses) the public have no right at common law to navigate (Howarth and Jackson 2011). And, while in tidal waters the right of navigation takes precedence over the right of fishery, "where no right of navigation exists in relation to inland waters, the use of those waters for the purposes of navigation will amount to a trespass which will be actionable in respect of any interference which it causes to rights of fishery in the waters" (Howarth and Jackson 2011).

This distinction between saline and sweet waters was in place when canoeing was introduced to British waters in the nineteenth century. It was not until the mid-to-late twentieth century, however, that anglers and canoeists positioned themselves at odds with each other and in relation to water law. From benign presences with a 'backcountry' mystique, canoes and their paddlers became reconceived as highly visible and mobile transgressors of received water law.

By 1965 the British Canoe Union had established an Access Committee to deal with access and river use issues experienced by its members, who had come into conflict (mostly verbal confrontations) with anglers, water bailiffs, or others questioning the legitimacy of their presence on the river.[11] At times, this conflict escalated to more physical confrontations and, at certain instances, violent interventions by people on the river bank to prevent the movement of canoes down the river, by throwing rocks, barbed wire strung across rivers, and in one unique incident, a human chain of anglers creating a physical barrier.

Increased participation in canoeing as outdoor activities and 'adventure' sports grew in popularity through the later half of the twentieth century are factors in this change. A rising demand for recreational facilities was an issue recognized by government in 1973. A House of Lords Select Committee on Sport and Leisure met to consider recreational provision in future policy. Though its scope went considerably beyond water-based recreation, the concurrent Water Act (1973) provided a political context that was frequently referred to in the committee's report. The Act transferred water supply and sewage disposal responsibilities from local authorities to ten new regional authorities. Concerned that it made no provision for recreation in its proposed changes to water management, yet aware that "there are national elements of amenity, public recreation and conservation in water undertakings", the committee successfully recommended that the Water Act include "positive recreational planning" by water authorities (H.M.S.O 1973).

The committee also acknowledged that

> the legal question of rights of way over water must be settled. A number of different legal interpretations of this right of way have been referred to it in evidence and it is time for these to be resolved…At a time when navigation for pleasure on inland waterways has overtaken commercial carriage the rights of navigation cannot be allowed to rest on an antiquated basis which is becoming increasingly irrelevant (H.M.S.O 1973, lxxiii).

[11] Water bailiffs in England and Wales are law enforcement officers responsible for policing bodies of water including lakes and rivers. They have powers to stop and search boats, examine fishing equipment, seize fish and nets, and apprehend suspected illegal fishermen. Water bailiffs have been appointed since the 1975 Salmon and Fisheries Act by the Environment Agency.

Conflict over water use had reached the point of recognition by Parliament, but despite the inclusion of recreation as a broad category in water management frameworks, the House of Lords refrained from addressing the specific issue of rights of use. This was, perhaps, informed by the position of several Lords as representatives of landowning bodies (e.g., Lord De Ramsey, Country Landowners Association), and as riparian owners themselves (e.g., Lord Chudleigh) with subsequent vested interests in maintaining the status quo, no matter how "antiquated" (342 Parl. Deb., H.L. 1973, pp.1009–78). The issue would reappear in Parliament in 2006 when a motion concerning Environment Agency funding and recreational provision again identified concern over ongoing conflict among river users and, again, failed to resolve it (Early Day Motion 235 2006-7).

As the number of recreational users grew, the possibilities for encounters on the water increased. For anglers as longer-standing river users, this was interpreted as disturbance to the river environment, and the fish in the water. This perception has arguably been exacerbated by the development of so-called canoe "honeypots", where the few rivers with clear-cut rights of navigation have attracted large numbers of canoeists. On the River Wye, on the Welsh-English border, for example, existing tourism patterns and a rare legal clarity that permits canoeing have led to widespread use, and commercial ventures that offer canoeing as an activity for stag [bachelor] parties of rowdy young men. Other canoeists are sensitive to this association, and stress the peaceful nature of their sport (rather than its more thrill-seeking aspects), "the fact you can move through the countryside making no noise whatsoever, you can come right up to a kingfisher [for example]."[12] Anglers also emphasize the peaceful appreciation of nature through fishing: "I go fishing so that I can fish somewhere nice and look…catching fish is a bonus. I go there to see things that other people don't see, otters, kingfishers."[13] The conflict between the groups has worked to emphasize difference and give voice to preconceptions—still often class-based, of anglers as "landed" and "influential", and of canoeists as "consumerists", a rabble of "outsiders," rather than to build on shared values (Church et al. 2007, p.219).[14]

The perception that canoeing disturbed fish was eventually given special attention by the Environment Agency which commissioned a study on the effects of canoeing on fish stocks and angling, in 2001. A panel of experts concluded that "canoeing is not harmful to coarse or salmonid fish stocks in rivers" (Henry and Tree 2000, p.24). Instead, it was the disturbance of *angling* that was the issue. The report remarked that "disturbance is in turn allied to the concept of exclusivity with its attendant financial implications for riparian interests and anglers." The consciousness among anglers of the high cost of fishing rights and perceived free passage on the water by canoeists was redefining encounters as conflicts, and others on the river as 'other.' Lifelong angler Herd interprets the situation thus: "anglers have, since the 1860s, paid license fees to fish rivers and had been the only people to contribute toward their upkeep. So historically there is a strong feeling among anglers of 'hey, if anyone else wants to use the facilities then if they pay as well we will all be talking'."[15]

[12] Keith Day and Jonathan Wood (founders and directors of River Access for All campaign). Personal interview. 25 September 2014.

[13] Andrew Herd (curator of the Online Angling Museum). Personal Interview. 15 May 2014.

[14] Simon Dawson. Personal Interview. 21 October 2014; Keith Day and Jonathan Wood. Personal interview. 25 September 2014.

[15] Andrew Herd. Personal Interview. 15 May 2014. Similar views were recorded in oral testimonies gathered by a University of Brighton study of right-based recreational conflict: Andrew Church, Paul

This interpretation conceives of the river as a commodity in which anglers have made a long-term investment. This investment has not just been monetary. Anglers have played active roles in monitoring water quality and lobbying for environmental river management, which in the UK was formally integrated into the water supply industry during the process of privatization from the late 1980s onwards. Prior to this, anglers had been instrumental in lobbying for river-clean ups, one notable success being the river Tyne. In 1959, along a twenty-mile stretch from Wylam to the sea it was estimated that 270 sewers poured 35 million tonnes of untreated sewage into the river daily, and the salmon rod returns were nil. The Northumbrian Anglers Association campaigned for action, and were eventually joined by the Tyneside authorities to form a Sewerage Board to solve the problem. By 1987 the salmon were running again, and the Tyne yielded the best total for rod-caught salmon in England (Marshall 1982, pp.60–64). Post-privatization of the water supply industry in 1989, water quality became a key driver of economic valuation, a factor also driven by the demands of the EU Water Framework Directive (introduced in 2000) which governs the quality of beach, bathing and drinking water, and the environmental quality of surface and groundwater (see Bakker 2005, pp.550–1). In 1995 the Environment Act created the Environment Agency to take over the responsibilities of the National Rivers Authority, Her Majesty's Inspectorate for Pollution, and English and Welsh waste regulation authorities to manage Britain's rivers (as well as aspects of land and coastal environmental management). The Environment Agency works with bodies such as the Angling Trust to co-ordinate fish restocking in rivers nationwide (Lidgett 2014). The relationship is also fiscal, as the Environment Agency issues the rod licenses necessary to fish in freshwater and uses the revenue to help fund its operations.

For the Environment Agency, the accumulation of capital from rod licences is tied to the maintenance of the health of the river ecosystem: anglers simply would not pay to fish empty, 'dead' rivers, while the upkeep of well-stocked rivers ensures future revenue. This two-way exchange places monetary value on the ways in which anglers interact with the river environment, which in the language of ecosystem services becomes a source of natural capital. The notion of natural capital has gained political traction in recent years with the uptake by governments and NGOs worldwide of an ecosystems services approach (Costanza et al. 1997; Hassan et al. 2005; Comicion Nacional para el Conocimiento y Uso de Biodiversidad 2006; UK National Ecosystem Assessment 2011; Maes et al. 2011). Anglers demonstrate a historical willingness to invest in rivers to secure their recreation, or 'benefits'. The privatization and quasi-commodification of water as a resource has dovetailed with their interests, and arguably given them institutional support through the close alliance with the Environmental Agency. The position of anglers as a recreational group on the river has been cemented by their purchase and exercise of riparian rights, and the wider developments in water management in England and Wales. Some scholars balk at the notion of quantifying and commoditizing human interactions with the environment. Those working in the environmental humanities (and others) understand that cultural and societal constructions and perceptions of nature colour every interaction between humans and ecosystems, and argue that these interactions are almost impossible to quantify or standardize (Dudley and Coates 2014). As a result, many are uncomfortable with the "essentially economic worldview" that ecosystem services, for example, rests upon and promotes for environmental management (Dudley and Coates 2014, p.4). Such a stance

Footnote 15 continued
Gilchrist and Neil Ravenscroft, 'Negotiating Recreational Access Under Asymmetrical Power Relations: The Case of Inland Waterways in England', *Society and Natural Resources* 20:3 (2007), 220.

might be comparable to the position of canoeists, who reject the notion of ownership and commodification of river water in favour of notions of universal use and common rights. In his critique of water privatization as an expression of neoliberal politics, Swyngedouw (2005) describes the process as "accumulation by dispossession". Applied to rivers as recreational spaces, accumulation of rights by one group (anglers) has led to the dispossession of, if not rights (the groups disagree as to whether canoeists have rights of navigation or use) then certainly recreational opportunity, of the other (canoeists).

Conflict on the river

Alternative conceptualizations of rivers developed as a result of increased grass-roots organizing within the canoeing community in response to conflict with anglers. The British Canoe Union had established its Access Committee relatively early in the history of this conflict, but as a national sports body in receipt of government funding (for the competitive sporting arm of the group) it was felt by some to be limited in its scope for improving the canoeing position through lobbying. Instead, by the mid-1980s—circa 1986, though recollections in interviewees have varied—a break-away group, the Campaign for River Access for Canoeists and Kayakers (CRACK) was formed.

CRACK heralded the formation not just of a tangible campaign, but an identity for canoeists that invoked notions of older, larger struggles for access rights, notably the access to land movement of the nineteenth and early twentieth centuries. The allegiance was self-conscious. Former member Simon Dawson recalls that "they had been heavily influenced by Kinder Scout and mass trespass [see below]. They looked back to that, the Ramblers who had been successful."[16] This influence was to shape both the method of campaign, and subsequent discussions of rights of use. It is worth noting that the link to the access to land movement influenced the terminology of river use. The issue became known as one of access, when in fact it aims more broadly to ensure more possibilities for river *use*.

The River Seiont in North Wales flows from its source, Llyn Padarn (a glacial lake) to the Menai Straits. It is valued by canoeists as an "excellent paddling river" (Canoe Wales website 2014) and by anglers as a site of "some of the finest salmon, sea trout and brown trout fishing" in the region (Seiont Gwyfai and Llyfni Fishing Society website 2016). It has fast-flowing rapids and slow-flowing deeper sections, pleasing a range of abilities in both sports. By the early 1980s it had become a hub of conflict between canoeists and anglers. Dawson recalls it as a place known amongst canoeists for tires getting deflated and car paint scratched, and stones thrown at canoeists on the water. A catalyst for direct action came when a local paddler, Ben Wright, was stoned as he assisted another paddler in distress and received serious facial injuries (Clissod et al. 2012, pp.63–4).[17]

The violent episode motivated CRACK to direct action. A mass trespass by canoeists down the river was organized in April 1988. Visible leaders or organizers were tactically avoided by the group to avoid liability, but through word of mouth around 150 canoeists turned up to paddle en masse. They launched onto Llyn Padarn and made their way down the river to their first obstacle, barbed wire stretched across the river. As the river was running wide and shallow the canoeists were able to step out of their boats and over the

[16] Simon Dawson. Personal Interview. 21 October 2014.

[17] Simon Dawson. Personal Interview. 21 October 2014; a written account by Dawson can be found in Clissod, Laws and Sladden, *Welsh Rivers Guide* 63-4..

wire. I was surprised to learn of such a potentially harmful object being used as an obstacle against canoeists, but as Dawson explained, barbed wire can also be used to prevent livestock from moving down a river, and is a known potential hazard. Past the wire, the protestors came to a "human chain" of fishermen "defending" the bridge (Clissod et al. 2012, p.63). The event had drawn a crowd of local people watching from the bank, and a police presence. The paddlers

> tried to negotiate, asking if we could pass and they weren't doing anything at all, fairly stubbornly refusing, and not getting violent. And because whitewater kayakers are used to clambering around cliffs to get around obstacles and that kind of thing, somebody had the idea to go over [the bridge, using abseil ropes] and lower the canoes down the other side. And because the anglers couldn't physically manhandle us because the police were there… it was easy to just pass the canoes over their heads. And we all got through. We all carried on down the river.[18]

That signalled the conclusion of the mass trespass, but it was far from the end of the conflict. The episode denotes a militant turn in the relationship between anglers and canoeists on the water. It was also an acting-out of ideas of common rights to natural resources that were formulating among canoeists, taking their cue from the campaigners for public access to open land and the now-famous Kinder Scout trespass in 1932.

Traditions of public access

Kinder Scout is an upland plateau in the Peak District. The area, which lies between Manchester and Sheffield, was (and is) a popular destination for people seeking respite from urban pollution and congestion, and physical, mental and spiritual nourishment. However, much of Britain's common and open land had, by the nineteenth century, been appropriated by the landed class through the process of enclosure. Large areas of the countryside were out of bounds to ordinary people, often on the grounds that they were used for hunting. Kinder Scout was a grouse reserve for the Duke of Devonshire, and worked for only 12 days a year (Davies 2008; Hey 2011, p.205).

A movement grew through the nineteenth and into the twentieth century campaigning for public access to open land. Class politics and ideas of public health ran deep within it, as Stephenson (1989), Jones (1992), Taylor (1997), Shoard (1999), Harker (2005), and Tebbutt (2006) have all explored. Radical and liberal thinkers and political actors including Octavia Hill and William Morris believed in the importance of open green spaces as "'lungs for the metropolis' and reservoirs for the renewal of the human soul" (Ranlett 1983, p.198; see also Taylor 1995). The Peak District, surrounded by populous manufacturing towns, became a focus for the campaign for access to open land. In 1932, an estimated 500 ramblers enacted a mass trespass of Kinder Scout. The protest received extensive media coverage and generated public debate over private property versus public good. Kinder Scout became a touchstone for working-class collective action.[19]

By convening a mass trespass CRACK were tracing their political roots back to Kinder Scout and the anti-enclosure, anti-private property and pro-public access movements that preceded it. Doing so served to directly align public rights of navigation on inland

[18] Simon Dawson. Personal interview. 21 October 2014.

[19] The Peak District's eventual designation as Britain's first National Park (1951) recognised its history as particularly contested terrain in the campaign for access to open land.

waterways with the right to roam on foot. The canoe/angler conflict, needless to say, has never gained the popularity of the right-to-roam movement which, with the success of National Park legislation (1949) and a formative role in the histories of the likes of the National Trust and Ramblers Association, has now assumed a position central to British heritage and nature conservation institutions. But by appealing to notions of public right and common spaces, CRACK reconfigured rivers as a public space against angler and riparian assertions of rivers as private spaces. When, in 2014, Keith Day of River Access for All (RAFA) explained the issue to me, he used the analogy of a footpath: "it is just like a footpath. You [the walker] can go along it, you're not allowed to stop and have a party, have a bonfire, you're not allowed to chop down trees—it is just a right of passage."[20] A similar right of passage through a river environment was what canoeists wanted, and reference to the access to land movement provided direct action precedence, and conceptual lineage.

Though the Seiont mass trespass drew a fair number of participants (for, and against), it stands as a lone peak in CRACK's history of direct action: the organization had disbanded within two years. Looking back, Dawson suggests that a lack of long-term lobbying plans left members discouraged by minimal progress of the movement in forcing widespread public support or policy change. Through the 1990s the British Canoe Union also ran an access campaign, producing information packs that contained instructions for lobbying local MPs. But, again, the potential for the leading national body to facilitate change was felt to be limited, and in recent years the issue has been spearheaded once more by a citizen-led campaign that has emerged from the margins.

River Access For All was established in 2011 by three men with a long involvement in river use debates, and takes the stance that "there is, and always has been, a public right of navigation on our rivers." (RAFA website 2016). RAFA embodies a turn away from direct action by mass trespass, instead promoting empowerment through knowledge by offering interpretations of water law that challenge the currently-accepted position. The campaign is pursued almost entirely online, via a website that features an interactive access map highlighting rivers with access issues that users can add experiences of conflict to, and providing advice for asserting paddler 'rights' when canoeing. The ideal "protest paddle," according to RAFA, would be "an old lady, and her grandchildren, and a dog [in canoes], no threat, no nuisance, just exercising their right quietly and peacefully."[21] Post-CRACK, canoe campaigners have in some respects returned to the "tactics of moral persuasion" exercised in the earlier days of the access to land movement, adopting a "quietist" approach that instead works for change by providing information for individuals to take up the cause and enact protest at the smallest scale: the individual (Taylor 1995, p.401).

Legal geographies and water commons

RAFA focuses its efforts on providing "evidence" of long-standing public navigation rights in law. This archive of references looks to English Common Law and particularly the ways in which the Magna Carta (1215) codified navigation on English rivers. The examples given are used to argue that navigation on rivers was an assumed right, something so every-day and widespread that it was taken as given in law (and protected against obstructions by weirs and kydells), until construction of artificial watercourses (canals) for

[20] Keith Day and Jonathan Wood. Personal Interview. 25 September 2014

[21] Keith Day and Jonathan Wood. Personal interview. 25 September 2014.

transport in the nineteenth century necessitated explicit discussions of navigation in law—by which time, references to medieval statutes regarding public navigation had fallen out of the canon.

But RAFA also looks further back, to Roman law, and its enshrinement of water as commons and rivers as public spaces. The website directs the user to the source, open access translations of the Justinian *Institutes* which state that "the following things are by natural law common to all—the air, running water, the sea, and consequently the seashore… All rivers and harbors are public, so that all persons have a right to fish therein… the public use of the banks of a river, as of the river itself, is part of the law of nations". The *res publicae* enshrined by Roman law did not survive in English common law, but the choice of evidence is not as anachronistic as might be assumed. In his *History of Water Law* Getzler (2004), p.270 notes a resurgence in the influence of Roman law in early nineteenth century legal thought, particularly in the area of water law where, perhaps due to the increasingly complicated doctrine of common law, there was appreciation for the clarity of its wisdom. And in the twentieth century, legal thinkers returned to the notion of a water commons. In 1934 Wiel questioned society's attempts to constrain the intrinsic qualities of the natural commons by affixing property values and boundaries to them.

He noted that

> there are frequent attempts to accomplish the illusion of distributing the corpus of the resource [running water] into private parts as though it were stationary like land…. Arguments issue every now and then which proceed in remarkable seriousness upon the idea of dividing the corpus of a stream of water into private longitudinal strips… or the feat is attempted of dividing the corpus transversely so as to imagine for each landowner a length of steam between his boundary lines (Wiel 1934, pp.433–4).

Wiel was incredulous that water had been portioned and claimed as property. The invisibly delineated geographies of running water have only increased in complexity since.

The campaign for public rights of use of British rivers by canoeists has developed a 'legal consciousness' (see Ewick and Silbey 1991, pp.731–749) among those fighting for the cause, and those defending the status quo against change. Much of RAFA's legal evidence has been collated by Douglas Caffyn, who researched rights of river navigation in non-tidal rivers for masters and doctoral theses in retirement (Caffyn 2004). However, when submitted to the Department for Environment, Food and Rural Affairs (DEFRA), Caffyn's work was dismissed by a legal advisor as a "self-published thesis" by someone with "no [formal] legal training;" he "endeavours to establish a common law right to navigation on tidal waters but his logic and the often obscure material he is quoting are legally unconvincing." (DEFRA 2004, published online 2014). RAFA claims the high cost of taking their case to the high court (only the Attorney General can defend a public right in English law) is prohibitive. This alternative approach has not gained traction within the legal community. By turning to the law to support their cases both sides acknowledge its primacy in determining how we use and protect rivers. But legal scholars remind us that the law itself is a cultural practice, reified by none more than its own practitioners:

> judges are its high priests, courtrooms its sanctuaries, professional schools its seminaries. Its scriptures are 'authorities' passed down from generation to generation by appointed oracles. Its god is a decontextualized, highly abstracted, and depersonalized 'rationality'…law is the antithesis of region, locality, place, community (Pue 1990, p.566).

The field of legal geography, as defined by Bennett and Layard (2015), seeks to destabilize this self-congratulatory retreat to rationality by investigating the co-constitutive relationship of people, place and law. Though not blind to place (designating national parks, for example, and regulating pollution), law approaches space selectively—sometimes ignoring it, while at other times embracing it (Bennett and Layard 2015, p.11). A legal-geographical approach asks how spatiality is invoked or ignored in law.

Though subject of many laws, rivers in some ways—as fluid entities, and life-support systems for multiple human and non-human societies—are absent. Discussions arise (and judgments are made) about their use, and to prevent dramatic change in their path or prevent water from being over-abstracted from their flow. The language of law defines rivers as "watercourses", a term which encompasses "different kinds of moving waters… estuaries, rivers, streams and their tributaries both above and below ground" (Howarth and Jackson 2011). The environmental, geographic, and socio-cultural specificity of a river is lost. The campaign for wider public rights of use of rivers calls for a reassessment of their place in contemporary, and future, life, in order to assimilate recreational uses into legal definitions of rivers. In doing so, RAFA and the British Canoe Union are resisting what Emel has described as a "history of water law [that] has been more like a … glacier—creating (and created by) local differences to be sure, but in essence moving slowly, steadily along, reducing almost everything in its path to a uniform plane" (Emel 1990, p.143). The glacier is dominant economic interests, the uniform plane it creates is of "instrumental rationality and the ideology of private property," the commodification of everything, and the denial of "the raucous, the mysterious, or the sacred" in an expertly constituted language which "holds us captive." (Emel 1990, p.543; Pue 1990, p.574).

In many ways the river use campaign has been a narrow, single-issue campaign that has not succeeded (to date) in raising widespread awareness. Its efficacy, especially when measured against the movement's own philosophical predecessors the right-to-roam movement, or larger recreational lobby groups [not least the Angling Trust, which had a presence at each of the main political party conferences in 2014 "to make sure that the voice of British angling is communicated right to the top of the British political system" (Angling Trust 2014)], is minimal at best. But the campaign is complicating our understanding of rivers, and demanding that multiple interests are placed on an equal footing. The current government-backed attempt to resolve differences between anglers and canoeists is through 'agreements' formulated between river stakeholders. But as RAFA notes, when negotiations take place between parties with very different levels of enfranchisement in terms of law, the exercise is doomed to fail: "it is not just a little bit unequal, it is "we've got all the rights, you've got none. [In that scenario] we are a supplicant." Attempts to negotiate recreational access under these asymmetrical power relations (as identified by Church et al.), have had limited success. Power determines method, with the franchised group supporting the current approach via agreements, which secures their place and does not challenge their primacy; the disenfranchised look to history for precedent, to legitimate their claim (echoing the practice of use-through-custom they argue gives rivers public rights of navigation). The conflict over rivers as recreational spaces demonstrates the ability for small-scale groups and individuals motivated by a cause to develop a legal consciousness constructed from everyday experiences, to give voice to their dealings with more empowered groups and negotiate the ways in which law impacts upon their choice of recreational practice.

Rivers as hydrocommons

The campaign for rights of public use of rivers has complicated our understanding of river space. It has highlighted the changing roles of river waters, from public spaces of navigation and fishery, to more regulated places of ownership, abstraction and supply. To some extent the law, with its many convolutions through the ages, reflects these changes. But the legal geographies of rivers have not kept up with the rate of change in rivers as social, recreational spaces. A widening of river use in the twentieth century is not (yet) reflected in law.

The multi-dimensionality of rivers has been recognized, and promoted, in recent scholarship across a range of disciplines, from history to anthropology to geography. Such scholarship seeks to 'unsettle' understandings of water as discrete matter and draw attention to its broader social dimensions and multifarious meanings (Gibbs 2013; Strang 2013; Linton and Budds 2014). Far more than simply a singular resource, and yet unique in ways of geography, use and mythology that references to "watercourses" cannot reflect, rivers have complex histories riven with geographical and cultural specificities *and* aspects of universality (Strang 2005; Féaux de la Croix 2011; Islar 2012). Hamblin, and Linton, contend that the "modernization" of water has taken the fluid from "a class of infinitely varied substances to a monolithic substance…a vocabulary stressing qualitative and geographic uniqueness gave way to a dichotomous determination in which water was pure or impure" (Hamblin 2000, p.315). With the discovery of water as compound not element, an intellectual abstraction and scientific specification was matched by increasing needs and desires to contain water and manage its flow. Thus, Linton (2010, p.19) argues, "modern" water is "characterized by its physical containment and isolation from people," its treatment as an ahistorical and homogenous entity, "reinforced by modern techniques of management that have enabled many of us to survive without having to think much about it."

The conflict between recreational users on English and Welsh rivers highlights the ways in which recreational use of river water brings particular appreciations of its flow and dynamism, and how—despite "modern" water's isolation from daily life—recreational users forge regular and meaningful interactions with water as material substance. In rejecting the apportionment of property lines drawn through a river's flow (that so bemused Wiel) and campaigning for the right to utilize that flow to move downstream (for nothing more than the pleasure of doing so), the campaign for wider public use of rivers seeks to move beyond narrow definitions of rivers and towards a re-mapping of rights.[22] Though they are far from achieving their "best case scenario [which] would be for a government agency to recognize public rights of navigation on all rivers—we are not holding our breath," the campaign for public rights of use is enacting in the public realm the assertion made by anthropologists and historians, that water and people are not just related in a material sense but also connected in experiential culture, and that our interactions with water become encoded in discourse (Strang 2004; Linton and Budds 2014). The canoeists challenge a discourse that does not recognize their presence on rivers, and follow that discourse to the place which upholds it: the law.

[22] See Neimanis, "Bodies of Water" for a discussion of re-mapping of rights via recognition of an "embodied" hydrocommons.

Conclusion

In the big picture of hydroelectric dams, water scarcity—and even "hydro-jihad"—the campaign by a small group of recreational canoeists to claim universal rights of use to English and Welsh rivers is a drop in the ocean.[23] But, in our considerations of the processes and possibilities of small-scale organizing, we recognize that efficacy is not always achieved through organizational size, winning and losing. By activism, and empowerment through knowledge, the campaign for public rights of river use is attempting to redraw the lines of ownership and property rights that currently legally constrict the abilities of rivers to flow as dynamic entities in their own right; by insisting on a common right to water use the canoeists invoke ancient notions of hydrocommons, and speak to new concepts of the hydrosocial cycle and water as a (re)creative space.

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[23] Vandana Shiva uses the term "hydro-jihad" in relation to the Iraq river project that has diverted water away from traditional marshland and threatened the survival of marsh Arabs who have lived by the Tigris and Euphrates for 5,000 years, and who have declared 'hydro-jihad' on Iraq as a result. Shiva, *Water Wars: Privatization, Pollution and Profit* (Cambridge, MA: South End Press, 2002).

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